§ 210.20 Motion to dismiss or reduce indictment.

1. After arraignment upon an indictment, the superior court may, upon motion of the defendant, dismiss such indictment or any count thereof upon the ground that:

(a) Such indictment or count is defective, within the meaning of section 210.25; or

(b) The evidence before the grand jury was not legally sufficient to establish the offense charged or any lesser included offense; or

(c) The grand jury proceeding was defective, within the meaning of section 210.35; or

(d) The defendant has immunity with respect to the offense charged, pursuant to section 50.20 or 190.40; or

(e) The prosecution is barred by reason of a previous prosecution, pursuant to section 40.20; or

(f) The prosecution is untimely, pursuant to section 30.10; or

(g) The defendant has been denied the right to a speedy trial; or

(h) There exists some other jurisdictional or legal impediment to conviction of the defendant for the offense charged; or

(i) Dismissal is required in the interest of justice, pursuant to section 210.40.

1-a. After arraignment upon an indictment, if the superior court, upon motion of the defendant pursuant to this subdivision or paragraph b of subdivision one of this section challenging the legal sufficiency of the evidence before the grand jury, finds that the evidence before the grand jury was not legally sufficient to establish the commission by the defendant of the offense charged in any count contained within the indictment, but was legally sufficient to establish the commission of a lesser included offense, it shall order the count or counts of the indictment with respect to which the finding is made reduced to allege the most serious lesser included offense with respect to which the evidence before the grand jury was sufficient, except that where the most serious lesser included offense thus found is a petty offense, and the court does not find evidence of the commission of any crime in any other count of the indictment, it shall order the indictment dismissed and a prosecutor's information charging the petty offense filed in the

appropriate local criminal court. The motion to dismiss or reduce any count of an indictment based on legal insufficiency to establish the offense charged shall be made in accordance with the procedure set forth in subdivisions one through seven of section 210.45, provided however, the court shall state on the record the basis for its determination. Upon entering an order pursuant to this subdivision, the court shall consider the appropriateness of any securing order issued pursuant to article 510 of this chapter.

2. A motion pursuant to this section, except a motion pursuant to paragraph (g) of subdivision one, should be made within the period provided in section 255.20. A motion made pursuant to paragraph (g) of subdivision one must be made prior to the commencement of trial or entry of a plea of guilty.

3. Upon the motion, a defendant who is in a position adequately to raise more than one ground in support thereof should raise every such ground upon which he intends to challenge the indictment. A subsequent motion based upon any such ground not so raised may be summarily denied, although the court, in the interest of justice and for good cause shown, may in its discretion entertain and dispose of such a motion on the merits notwithstanding.

4. Upon dismissing an indictment or a count thereof upon any of the grounds specified in paragraphs (a), (b), (c) and (i) of subdivision one, or, upon dismissing a superior court information or a count thereof upon any of the grounds specified in paragraphs (a) or (i) of subdivision one, the court may, upon application of the people, in its discretion authorize the people to submit the charge or charges to the same or another grand jury. When the dismissal is based upon some other ground, such authorization may not be granted. In the absence of authorization to submit or resubmit, the order of dismissal constitutes a bar to any further prosecution of such charge or charges, by indictment or otherwise, in any criminal court within the county.

5. If the court dismisses one or more counts of an indictment, against a defendant who was under the age of sixteen at the time of the

commission of the crime and who did not lack criminal responsibility for such crime by reason of infancy, and one or more other counts of the indictment having been joined in the indictment solely with the dismissed count pursuant to subdivision six of section 200.20 is not dismissed, the court must direct that such count be removed to the family court in accordance with article seven hundred twenty-five of this chapter.

6. The effectiveness of an order reducing a count or counts of an indictment or dismissing an indictment and directing the filing of a prosecutor's information or dismissing a count or counts of an indictment charging murder in the first degree shall be stayed for thirty days following the entry of such order unless such stay is otherwise waived by the people. On or before the conclusion of such thirty-day period, the people shall exercise one of the following options:

(a) Accept the court's order by filing a reduced indictment, by dismissing the indictment and filing a prosecutor's information, or by filing an indictment containing any count or counts remaining after dismissal of the count or counts charging murder in the first degree, as appropriate;

(b) Resubmit the subject count or counts to the same or a different grand jury within thirty days of the entry of the order or such additional time as the court may permit upon a showing of good cause; provided, however, that if in such case an order is again entered with respect to such count or counts pursuant to subdivision one-a of this section, such count or counts may not again be submitted to a grand jury. Where the people exercise this option, the effectiveness of the order further shall be stayed pending a determination by the grand jury and the filing of a new indictment, if voted, charging the resubmitted count or counts;

(c) Appeal the order pursuant to subdivision one or one-a of section 450.20. Where the people exercise this option, the effectiveness of the order further shall be stayed in accordance with the provisions of subdivision two of section 460.40.

If the people fail to exercise one of the foregoing options, the

court's order shall take effect and the people shall comply with paragraph (a) of this subdivision.